



## **Federal Highway Administration**

### **Buy America Waiver Notification**

**AGENCY:** Federal Highway Administration (FHWA), Department of Transportation (DOT).

**ACTION:** Notice.

**SUMMARY:** This notice provides information regarding FHWA's finding that it is appropriate to grant a Buy America waiver to the Iowa Department of Transportation (Iowa DOT) for procurement of foreign iron and steel components for two elevators or let-down structures for the pedestrian bridge associated with the I-74 Mississippi River Bridge Project in Bettendorf, Iowa, specifically including: (i) traction elevator components; (ii) elevator guide rails; and (iii) certain auxiliary components of the elevators or let-down structures.

**DATES:** The effective date of the waiver is [INSERT DATE ONE DAY AFTER DATE OF PUBLICATION IN FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** For questions about this notice, please contact Mr. Brian Hogge, FHWA Office of Infrastructure, 202-366-1562, or via e-mail at [Brian.Hogge@dot.gov](mailto:Brian.Hogge@dot.gov). For legal questions, please contact Mr. Patrick C. Smith, FHWA Office of the Chief Counsel, 202-366-1345, or via e-mail at [Patrick.C.Smith@dot.gov](mailto:Patrick.C.Smith@dot.gov). Office hours for FHWA are from 8:00 a.m. to 4:30 p.m., E.T., Monday through Friday, except Federal holidays.

### **SUPPLEMENTARY INFORMATION:**

#### **Electronic Access**

An electronic copy of this document may be downloaded from the Federal Register's home page at: [www.FederalRegister.gov](https://www.FederalRegister.gov) and the Government Publishing Office's database at: [www.GovInfo.gov](https://www.GovInfo.gov).

#### **Background**

FHWA's Buy America regulation in 23 CFR 635.410 requires a domestic manufacturing process for any steel or iron products (including protective coatings) that are permanently incorporated in a Federal-aid construction project. The regulation also provides for a waiver of the Buy America requirements when the application would be inconsistent with the public interest or when satisfactory quality domestic steel and iron products are not produced in the United States in sufficient and reasonably available quantities. This notice provides information regarding FHWA's finding that it is appropriate to grant Iowa DOT a Buy America waiver for procurement of foreign iron and steel components for two elevators or let-down structures for the pedestrian bridge associated with the I-74 Mississippi River Bridge Project in Bettendorf, Iowa, specifically including: (i) traction elevator components; (ii) elevator guide rails; and (iii) certain auxiliary components of the elevators or let-down structures.

*Background on the I-74 Mississippi River Bridge Project:* The city of Bettendorf, Iowa, through Iowa DOT, is seeking a Buy America waiver for two pedestrian elevators, or let-down structures, needed for a pedestrian bridge associated with the I-74 Mississippi River Bridge Project in Bettendorf, Iowa. The waiver request is for procurement of foreign iron and steel components for construction of the two elevators, specifically including: (i) traction elevator components; (ii) elevator guide rails; and (iii) certain auxiliary components of the elevators or let-down structures.

The two elevators are part of the approximately \$1.2 billion I-74 Mississippi River Bridge Reconstruction Project. The elevators are needed to meet accessibility requirements under the Americans with Disabilities Act, 42 U.S.C. 12101, *et seq.*, for a new pedestrian bridge. The elevators also provide additional safety for pedestrians and bicyclists. The pedestrian bridge and elevators will provide links to both the Illinois and Iowa river trail network.

The Pedestrian Bridge and elevators are included under an approximately \$2.2 million contract. The city originally estimated that the elevators would cost approximately \$427,000. This contract is 100 percent funded by the city of Bettendorf, Iowa, with no Federal funding. However, the pedestrian bridge and structures connecting the bridge to the trail network were included under the final environmental impact statement and record for the overall I-74 Mississippi River Bridge Project. Therefore, under 23 U.S.C. 313(g), FHWA's Buy America provision applies to the contract and letdown structure. All other contracts associated with the approximately \$1.2 billion project are expected to comply with Buy America requirements.

*Background on Waiver Request:* The Iowa DOT originally submitted a Buy America waiver request letter to FHWA for certain components of the elevators in March 2020. Prior to requesting a waiver, the city of Bettendorf unsuccessfully attempted to identify domestic manufacturers for these products. The Iowa DOT reported to FHWA in the waiver request letter that the city contacted 11 U.S. elevator manufacturers, but none of them could produce elevators meeting the needs of the project using only U.S. steel. The March 2020 request letter sought a waiver for traction elevator components and elevator guide rails.

The elevators identified by Iowa DOT and the city as meeting the needs of the project are produced by KONE Oyj, a company with headquarters in Finland, but also with operations and facilities in the United States. Iowa DOT identifies the elevators as two Monospace 500 model elevators with glass rear walls.

After receiving the waiver request, in April 2020 FHWA requested that the Iowa DOT and the city of Bettendorf answer questions about their previous search for Buy America compliant products. FHWA also requested that they continue seeking to maximize the use of goods, products, and materials produced in the U.S. on the project. In response to this request and later follow-up questions from FHWA, the city of

Bettendorf attempted over several additional months to identify domestic manufacturers that it had not identified in its original search, or, if full compliance was not possible, foreign manufacturers that could maximize use of domestic content by using greater quantities of U.S. steel. These additional search activities continued between April and August of 2020, but the city did not identify compliant products.

In August 2020, Iowa DOT responded to FHWA's questions. It explained that none of the manufacturers Iowa DOT or the city of Bettendorf contacted could satisfy Buy America requirements. It also explained that none of the manufacturers could provide reliable certifications of domestic content percentages (to show maximization of domestic content). After completing its additional research, Iowa DOT expanded its waiver request to include certain additional components of the elevator letdown structures. Iowa DOT explained that it could not find a manufacturer to meet Buy America requirements for additional auxiliary "components [in the elevator letdown structures], such as mechanical air handling equipment." The contacted manufacturers explained that they were unable to verify the origin of source of materials to satisfy FHWA's Buy America requirements. Iowa DOT explained that these components are not frequently used in highway construction projects. Instead, they are predominantly used for commercial applications around the world, in which material source of origin certifications and Buy America requirements are not applicable.

The August 2020 letter from Iowa also explained that KONE Oyj was asked to review the potential for assembling non-standard elevators that would have a greater domestic steel and iron content to meet Buy America requirements. KONE Oyj provided an alternative design, but could still neither meet the Buy America requirements nor guarantee or certify the precise amount of domestic content. Moreover, the alternative design provided by KONE Oyj would not meet project requirements in terms of size, capacity, or safety. Regarding safety, elevators designed with unique, customized parts

would be more difficult to maintain, which could impact the safety and reliability of their operation.

Iowa DOT's August 2020 letter also addressed alternative designs that were considered such as rack and pinion elevators. Iowa DOT explained that rack-and-pinion elevators, which are used primarily as freight elevators, were not suitable to the elevator's intended purpose of passenger transport. Moreover, adding structural elements to the project design to support rack-and-pinion elevators could increase project costs by \$2 million. It did not consider this cost increase feasible. An alternative design would also result in significant delays for the project. At the time of the letter, the I-74 Mississippi River Bridge was scheduled to open to Iowa-bound vehicle traffic at the end of 2020 and to Illinois-bound vehicle traffic before the end of 2021. The bridge subsequently opened to Iowa-bound traffic in December 2020 and, as of September 2021, is currently facilitating two-way traffic (with two lanes in each direction) until construction is complete. The Illinois-bound section of the bridge is in the final stages of construction and is scheduled to open in December 2021.

In the August 2020 letter Iowa DOT also reported that other alternative designs were considered, but also could not fully comply with Buy America requirements for all components and would result in significantly higher construction costs and lengthy project redesign. Thus, Iowa DOT did not find justification for pursuing the alternative designs.

Iowa DOT also explained the current fiscal situation in the city of Bettendorf in the August 2020 letter. It explained that the COVID-19 public health emergency has caused financial hardship for the city and that any additional costs associated with Buy America compliance, such as completely redesigning the elevators or adding structural components, would impact the city's ability to complete the project and fund necessary services.

In October 2020, FHWA again contacted Iowa DOT with additional questions regarding its efforts to comply with Buy America and Executive Order 13788, 82 FR 18837 (Apr. 21, 2017), which was later revoked by Executive Order 14005. 86 FR 7475 (Jan. 28, 2021). FHWA also sought clarity on the scope of waiver the request. Later that month, Iowa DOT provided answers to FHWA's questions with additional information on its compliance efforts and a cost estimate sheet identifying all items for which it seeks a waiver (Exhibit D). A link to Exhibit D is included on the Notice of Buy America Waiver Request published on FHWA's Website on January 5, 2021, as described below. All items included in the waiver request are identified as not meeting Buy America in the first column of Exhibit D. The estimated total cost of the waiver items is approximately \$768,000. FHWA removed the cost estimates for individual line items in Exhibit D to maintain the confidentiality of the city's procurement-sensitive information during its solicitation process.

In accordance with the Further Consolidated Appropriations Act, 2020 (Pub. L. 116-94), FHWA published a notice seeking comment on whether a waiver was appropriate on its Website, <https://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=156>, on January 5, 2020.

The FHWA received 36 comments in response to the publication. Seven commenters opposed the waiver and 29 commenters generally expressed support for it. Six of the comments opposing the waiver did not offer any information on the availability of compliant products, nor did they suggest specific, additional actions that Iowa DOT could take to maximize its use of goods, products, and materials produced in the U.S.. Another commenter opposing the waiver suggested obtaining additional certification documentation from suppliers but did not offer specific information on compliant products or means of identifying them. Thus, Iowa DOT did not receive any new

information indicating that the subject parts could be produced by domestic manufacturers.

Although Iowa DOT did not identify compliant components for the let-down structures, it provided information to FHWA supporting its waiver request, including:

- Information describing its efforts to obtain the domestic content characteristics of the manufactured products needed;
- Information supporting the necessity of these specific let-down structures for the project's intended purpose of passenger transport and demonstrating that alternative designs were infeasible;
- Information documenting efforts to locate compliant manufactured products;
- Information documenting efforts to maximize domestic content even if full compliance was not possible, including efforts to have foreign manufacturers incorporate domestic steel; and
- Information describing the effects of denying the request.

The following sections summarize relevant information from Iowa DOT.

Although ultimately unsuccessful, Iowa DOT made substantial efforts to find suitable Buy America compliant components for the let-down structures.

*Timing and Need for a Waiver.* The Iowa DOT maintains that approval of a Buy America waiver for the relevant components of the let-down structures is now critical to maintain the schedule of ongoing construction on the project. The I-74 Mississippi River Bridge opened to Iowa-bound vehicle traffic at the end of 2020 and is scheduled to open to Illinois-bound vehicle traffic before the end of 2021. Iowa DOT believes it has exhausted its options for domestic alternatives.

*Executive Order 14005.* Executive Order 14005, "Ensuring the Future is Made in All of America by All of America's Workers," provides that agencies should, consistent with applicable law, maximize the use of goods, products, and materials produced in, and

services offered in, the U.S.. 86 FR 7475 (Jan. 28, 2021). Based on the information contained in the waiver request from Iowa DOT and the lack of responsive comments following publication of a notice seeking comment on January 5, 2020, regarding available domestic manufacturers for the subject parts, FHWA concludes that issuing a waiver is not inconsistent with Executive Order 14005.

### **Finding and Request for Comments**

Based on all the information available to the Agency, FHWA concludes that there are no Buy America-compliant relevant components for the let-down structures for the pedestrian bridge associated with the I-74 Mississippi River Bridge Project, specifically including: (i) traction elevator components; (ii) elevator guide rails; and (iii) certain auxiliary components of the elevators or let-down structures. This finding only includes components identified in the waiver request and supporting documents included on FHWA's Website.

Iowa DOT and its contractors and subcontractors involved in the procurement of the relevant components are reminded of the need to comply with the Cargo Preference Act in 46 CFR part 38, if applicable.

In accordance with the provisions of Section 117 of the SAFETEA-LU Technical Corrections Act of 2008 (Pub. L. 110-244, 122 Stat. 1572), FHWA is providing this notice as its finding that a waiver of Buy America requirements is appropriate. The FHWA invites public comment on this finding for an additional 5 days following the effective date of the finding. Comments may be submitted to FHWA's Website via the link provided to the waiver page noted above.

Authority: 23 U.S.C. 313; Pub. L. 110-161; 23 CFR 635.410.

**Stephanie Pollack,**  
*Acting Administrator,*  
*Federal Highway Administration.*



